

WCA Rule Advisory Committee - 6/26/08 Meeting

Draft Wetland Planning Section

The edits to this section are intended to increase clarity, improve focus of planning efforts, provide guidance and structure where little existed before, and provide consistency with the watershed approach to mitigation in the Corps/EPA Mitigation Rule.

The overall heading of "Wetland Planning" was added to encompass the local comprehensive wetland protection and management plans, high priority areas, and wetland preservation areas parts of the rule.

WETLAND PLANNING

8420.0650 LOCAL COMPREHENSIVE WETLAND PROTECTION AND MANAGEMENT PLANS.

Subpart 1. ~~General requirements and participation~~ Purpose and eligibility.

A. As an alternative to the rules adopted under Minnesota Statutes, section [103G.2242, subdivision 1](#), and the public value criteria established or approved under Minnesota Statutes, section [103B.3355](#), a comprehensive wetland protection and management plan may be developed by a local government unit, ~~or~~ one or more local government units operating under a joint powers agreement, or a watershed district provided that: the requirements of this part are met. This part provides minimum standards. Local government units must require equivalent or greater standards and procedures for wetland conservation, but not less.

B. The ultimate goal of a plan is to maintain and improve the quality, quantity, and biological diversity of wetland resources within watersheds through the prioritization of existing wetlands and the strategic selection of replacement sites. The purpose of developing a plan is to provide a watershed and ecosystem based framework to make wetland impact and replacement decisions that meet locally identified goals and support the sustainability or improvement of wetland resources in watersheds while providing local flexibility as allowed under subpart 4.

C. Subp. 7. Local program capacity requirements. Any local government unit opting to pursue incorporating this chapter into local ordinance must provide documentation to the board demonstrating local capacity to implement the plan program consistent with requirements prescribed in part 8420.0200, subpart 2, item A.

- *The bottom sentence in item A was moved here from the previous item C of this subpart (below).*
- *Item B states upfront that the plan should have a broad watershed and ecosystem focus and provides consistency with the Corps/EPA Mitigation Rule. This language could be tweaked and/or additional language could be added to clearly say what a plan can do (allow flexibility to adapt certain standards to local conditions, etc.)*
- *Item C is the previous subpart 7 and was edited to require documentation relating to the ability to implement the plan, which may be more rigorous than WCA.*

~~(1) a notice is made at the beginning of the planning process to the board, the commissioner of natural resources, the Pollution Control Agency, local government units, and local citizens to actively participate in the development of the plan; and~~

~~(2) the plan is implemented by ordinance as part of the local government unit's official controls under Minnesota Statutes, chapter 394, for a county; Minnesota Statutes, chapter 462, for a city; Minnesota~~

Statutes, chapter 366, for a town; and by rules adopted under Minnesota Statutes, chapter 103D, for a watershed district; and Minnesota Statutes, chapter 103B, for a watershed management organization.

~~B. An organization that is invited to participate in the development of the local plan, but declines to do so and fails to participate or to provide written comments during the local review process, waives the right during board review to submit comments, except comments concerning consistency of the plan with laws and rules administered by that agency. In determining the merit of an agency comment, the board shall consider the involvement of the agency in the development of the local plan. The technical evaluation panel must be consulted in all components of plan and ordinance development including, but not limited to, conducting wetland functional assessments, establishing wetland management classifications, and identifying local reference standard wetlands.~~

~~C. After board approval and local government adoption, replacement plan, exemption, and no-loss determinations are made according to the plan and ordinance. This part provides minimum standards. Local government units must require equivalent or greater standards and procedures for wetland conservation, but not less.~~

Items 1 and B above are proposed to be relocated to subpart 6, Plan Development and Review Process. Items 2 and C above are proposed to be relocated to subpart 8, Implementation.

Subp. 2. Relationship to other plans. ~~G. To maximize effectiveness, the comprehensive wetland protection and management plan may should be developed as part of, or in conjunction coordination with, a local water plan. other relevant local or regional plans and requirements. The plan should provide a mechanism for integrating local land use decisions with wetland and ecosystem management goals at the regional or watershed level.~~

Some have commented that it should be a requirement to develop CWPMPs as part of a local water plan or other local plan (should would be changed to a must). Input is requested.

Subp. 3. Plan area. ~~To the extent practical and feasible, the plan should be based on watershed boundaries. The size of watershed addressed should not be larger than is appropriate to ensure that the wetland resources provided through replacement will effectively compensate for approved impacts. For local governments with multiple watersheds, a separate analysis should be completed for each watershed substantially within the local government's jurisdiction. Local governments should consider joint planning efforts for those watersheds that cross political boundaries.~~

The addition of this subpart adds a preference for the plan, or analysis within the plan, to be developed based on watershed boundaries. This subpart also helps provide consistency with the Corps/EPA Mitigation Rule, and some of the language is taken directly from that rule.

Subp. ~~24.~~ **Plan contents-Flexibility options under a local plan.** The comprehensive wetland protection and management component of the local water plan may:

~~A. provide for classification of wetlands in the plan area based on:~~

~~(1) an inventory of wetlands in the plan area;~~

~~(2) an assessment of the wetland functions listed in part 8420.0103, using a methodology chosen by the technical evaluation panel from one of the methodologies established or approved by the board; and~~

~~(3) the resulting public values;~~

The title of this subpart was changed to more accurately identify its contents, and item A was relocated to the new plan contents section.

~~BA.~~ vary application of the sequencing standards in part 8420.0520XXXX, for projects based on the classification and criteria set forth in the plan;

~~GB.~~ vary the replacement standards of part 8420.0540XXXX, based on the classification and criteria set forth in the plan, ~~for specific wetland impacts~~ provided there is no net loss of public values within the area subject to the plan, and so long as:

(1) in a 50 to 80 percent area, a minimum acreage requirement of one acre of replaced wetland for each acre of ~~drained or filled impacted~~ wetland requiring replacement is met within the area subject to the plan; and

(2) in a less than 50 percent area, a minimum acreage requirement of two acres of replaced wetland for each acre of ~~drained or filled impacted~~ wetland requiring replacement is met within the area subject to the plan, ~~except that replacement for the amount above a 1:1 ratio can be accomplished as described in part 8420.0540, subpart 2;~~

~~DC.~~ in a greater than 80 percent area, allow replacement credit, based on the classification and criteria set forth in the plan, for any project that increases the public value of wetlands, including activities on adjacent upland acres;

~~ED.~~ in a greater than 80 percent area, based on the classification and criteria set forth in the plan, expand the application of the exemptions in part [8420.0122](#), subpart 1, item B, to also include nonagricultural land, provided there is no net loss of wetland values;

~~FE.~~ prescribe standards for size and location of replacement wetlands by establishing type requirements, size/ratio requirements, functional quality requirements, location requirements, and ~~criteria for~~ wetland mitigation fee in lieu of direct replacement ~~criteria~~. Requirements for replacement must have a direct relationship with wetland classification as defined in the plan and must result in no net loss of wetland quantity, quality, and biological diversity over the life of the plan ~~which cannot exceed ten years; and~~

~~GF.~~ allow exemptions based on ordinance standards, eligibility criteria, and processes that are not less restrictive than the requirements in parts [8420.0115](#), [8420.0122](#), and [8420.0210](#) based on wetland classifications as defined in the plan; ~~and~~

~~H. define and establish high priority wetland areas pursuant to parts 8420.0350 and 8420.0400.~~

The above edits remove language referring to PVC, relocate the plan length criteria and item H to subpart 5. The BWSR staff rule team discussed clarifying items E and B or incorporating E into B since they are similar. This will be explored.

~~Subp. 2a. Project notice and appeal under local ordinance.~~

~~A. The local government unit shall submit to the commissioner of natural resources, the watershed district if there is one, local government units, members of the technical evaluation panel, and local citizens who request it, a copy of the application and provide at least 15 days' notice for comments and a schedule for a hearing if one is to be held. A copy of all decisions shall be forwarded to those mentioned above within ten days of the action.~~

~~B. Appeals of ordinance decisions. Persons may appeal replacement plan, no-loss and exemption determinations made pursuant to an approved wetland ordinance according to the procedures defined in part 8420.0250.~~

The above subpart is proposed for deletion as it is unnecessary and covered under the new "Implementation" subpart below and earlier sections dealing with appeals and noticing.

Subp. 5. Plan content.

A. Assessment of existing conditions and determination of watershed goals. The plan must be based on an analysis of the ecological conditions of the plan area and the development of corresponding

goals for maintaining and improving those conditions. The ecological condition of the plan area should be based on inventories of historic and existing wetland resources, including identification of degraded wetlands, existing high quality wetlands, and immediate and long-term resource needs within the watershed or plan area. This analysis may be completed as part of the comprehensive wetland protection and management plan, or adopted from a relevant local or regional water plan if one exists.

AB. Classification of existing wetlands. The plan may provide for the classification of wetlands in the plan area based on:

- (1) an inventory of wetlands in the plan area;
- (2) an assessment of the wetland functions listed in part 8420.0103, using a methodology chosen by the technical evaluation panel from and based on one of the methodologies established or approved by the board; and
- (3) landscape position, adjacent habitats or buffers, connectivity with or between important resources, projected land use, and other watershed-scale criteria; and
- (4) the resulting public value.s;

C. Inventory and prioritization of replacement sites. The plan must include an analysis of the types and locations of replacement projects that will provide the desired wetland functions, benefit the watershed from a landscape perspective, and best offset losses of public value caused by approved impacts. The goal of this analysis is to provide a framework from which replacement actions and locations will provide the greatest value to the public based on the ecological needs of the watershed. Priority should be given to replacement that restores naturally occurring wetlands and best achieves watershed goals and improves the ecological condition of the watershed. The plan must include strategies for the promotion and establishment of high priority replacement sites that best meet the goals of the plan.

D. High priority areas. Comprehensive wetland protection and management plans developed as part of county, watershed district, or watershed management organization plans may identify those areas that qualify as high priority areas for wetland preservation, enhancement, restoration, and establishment according to 8420.XXXX. ?????????????????????

E. Assessing plan effectiveness. The plan should include a provision for periodic assessment of the effectiveness of the plan, and the local government unit's implementation of it, in achieving plan goals. Updates to previously approved plans should include an analysis of the effectiveness of the previous plan, including the identification of barriers to achieving identified goals and development of strategies to overcome them.

F. Effective date and expiration. The plan must specify the period covered by the plan, which must extend at least five years but no more than ten years from the date the board approves the plan.

The above subpart is added to differentiate between the allowable actions & minimum standards the plan must meet (previous subpart) vs. the analysis and content contained in the plan.

- *Item A provides the context for plan development, requiring it be based on an assessment of existing conditions and the identification of watershed-based goals, and provides more consistency with the Corps/EPA Mitigation Rule.*
- *Item B was relocated here from the original subpart 2, as it is a planning activity that may be done as part of the plan and is not in itself a minimum standard.*
- *Item C is included to require a watershed-based inventory, analysis, and prioritization of replacement sites and to provide consistency with the watershed approach to mitigation in the Corps/EPA mitigation rule. It also requires the plan to include some process for achieving plan goals by promoting restoration/banking of high priority sites.*
- *Item D provides a tie to High Priority Areas and Wetland Preservation Areas.*
- *Item E provides a periodic self-assessment of implementation success.*
- *Much of the language in items A and C was summarized directly from the Corps/EPA mitigation rule.*

Subp. 6. Plan development and review process.

A. (1) – aA notice of intent to plan must be sent, is made at the beginning of the planning process, to the board technical evaluation panel, the commissioner Department of Natural Resources, the Pollution Control Agency, watershed management organizations within the plan area, local government units within and adjacent to the plan area, and the United States Army Corps of Engineers. local citizens with an invitation to actively participate in the development of the plan. – and The notice should also include a general description of the planning effort, the planning area, and an anticipated timeline.

B. The technical evaluation panel must be consulted in all components of plan and ordinance development including, but not limited to, conducting wetland functional assessments, establishing wetland management classifications, prioritizing replacement sites, and identifying local reference standard wetlands.

C. The local government unit must have a process for notifying and involving local citizens in the development of the plan and determination of local values. Local citizen involvement can include the formation of a citizen's advisory committee or utilization of other existing citizen groups.

D. Upon completion, the local government unit must submit the draft plan and ordinance for a 60-day review and comment period to those required to receive notice in item A of this subpart. The local government unit must respond in writing to any comments received during the review period within 30 days of the end of the review period.

E. The local government unit must conduct a public hearing on the plan no sooner than 30 days after the end of the 60-day review period but before submittal of the final draft plan to the board for approval.

F. After conducting the public hearing but before final adoption, the local government unit must submit the plan and ordinance, all written comments received, a record of the public hearing, and a summary of responses to comments and changes incorporated as a result of the review process to the board for review under subpart 7 of this part.

BG. An organization that is invited to participate in the development of the draft local plan, but declines to do so and or fails to participate or to provide written comments during the local review process, waives the right during board the review under item D to submit comments, except comments concerning consistency of the plan with laws and rules administered by that agency. In determining the merit of an agency comment, the board shall consider the involvement of the agency in the development of the local plan.

H. Except as otherwise provided for in this part, all other requirements relating to development of the plan must be consistent with the local water plan processes under Minnesota Statutes, section 103B.231, 103B.311, or 103D.401.

The purpose of the above edits is to clarify the plan development, review, and approval process. Current rule provides some direction but is unclear regarding much of the plan development process, only requiring that it be “consistent with the local water planning processes.” The edits above are intended to provide a distinction between the agency review period and the board approval process, and are consistent with WCA requirements for CWPMPs and local water planning processes. The edits also clarify that the implementing ordinance must be included with the plan during the review process.

Items D and E are consistent with the 60-day review period for watershed and groundwater plans under 103B.231 Subd. 7 and 103B.255 Subd. 8 respectively. Item F is consistent with 103B.315 Subd. 5.

Subp. ~~37~~. **Board ~~review and approval decision~~; mediation; judicial review.**

~~A. The board shall make a decision to approve or disapprove a plan within 60 days of receipt of a complete and final draft of the plan and ordinance as required in subpart 6F of this part. The board may disapprove all or parts of the plan if the board determines it does not meet the requirements of this part. If the board has not made a decision within 60 days of receipt of the final plan, the plan is deemed approved 60 days after the local government unit submits the final plan to the board, unless the board disagrees with the plan as provided in item D.~~

~~B. The board may not disapprove a plan if the board determines the plan meets the requirements of this part.~~

~~CB~~. In its review of a plan, the board shall advise the local government unit of those elements of the plan that are more restrictive than state law and rules.

~~DC~~. If the board disagrees with the plan or any elements of the plan, the board shall, in writing, notify the local government unit of the plan deficiencies and suggested changes. The board shall include in the response to the local government unit the scientific justification, if applicable, for the board's concerns with the plan. Upon receipt of the board's concerns with the plan, the local government unit has 60 days to revise the plan and resubmit the plan to the board for reconsideration, or the local government unit may request a hearing before the board. The board shall hold a hearing within the boundaries of the jurisdiction of the local government within 60 days of the request for hearing. After the hearing, the board shall, within 60 days, prepare a report of its decision and inform the local government unit.

~~ED~~. If, after the hearing, the board and local government unit disagree on the plan, the board shall, within 60 days, initiate mediation through a neutral party. If the board and local government unit agree in writing not to use mediation or the mediation does not result in a resolution of the differences between the parties, then the board may commence a declaratory judgment action in the district court of the county where the local government unit is located. If the board does not commence a declaratory judgment action within the applicable 60-day period, the plan is deemed approved.

~~FE~~. The declaratory judgment action must be commenced within 60 days after the date of the written agreement not to use mediation or 60 days after conclusion of the mediation. If the board commences a declaratory judgment action, the district court shall review the board's record of decision and the record of decision of the local government unit. The district court shall affirm the plan if it meets the requirements of this part.

~~G. The comprehensive wetland protection and management plan may be developed as part of, or in conjunction with, a local water plan. Except as otherwise provided for in this part, all other requirements relating to development of the plan must be consistent with the local water plan processes under Minnesota Statutes, section 103B.231, 103B.311, or 103D.401.~~

The edits to item A are intended to clarify the board's role in approving or disapproving the plan. Item B was incorporated into item A.

***The first sentence of item G is proposed for relocation to subpart 5 and edited there.
The second sentence of item G is proposed for relocation to subpart 6 (Plan development and review process), item H.***

Subp. 8. Implementation.

~~(2)~~ **A. The plan is must be implemented by ordinance as part of the local government unit's official controls under Minnesota Statutes, chapter 394, for a county; Minnesota Statutes, chapter 462, for a city; Minnesota Statutes, chapter 366, for a town; and by rules adopted under Minnesota Statutes, chapter**

103D, for a watershed district; and Minnesota Statutes, chapter 103B, for a watershed management organization.

~~CB.~~ After board approval and local government adoption, ~~replacement plan, exemption, and no-loss determinations are~~ decisions made in implementing this chapter and the act must be made according to the plan and ordinance.

~~C.~~ Noticing, appeals, and all other administrative processes under a local plan must follow the requirements of this chapter.

Subp. 49. **Effective date and amendments.**

A. The plan becomes effective ~~after approval by the board~~ as provided in subpart 37 and after adoption of the plan into the official controls of the local government unit.

~~B.~~ Comprehensive wetland protection and management plans remain effective according to subp. 5F, unless revised according to subp. 6. Plans that contain revision dates inconsistent with this part must comply with that date provided it is not more than 10 years beyond the date of board approval. A two year extension of the revision date of the plan may be granted by the board.

~~C.~~ All amendments to the adopted plan and ordinance ~~become effective upon completion of the same process required for the original plan, except when the proposed amendments constitute minor amendments and; must be approved by the board.~~

~~(1) a public hearing has been held to explain the amendments;~~

~~(2) the local government unit has sent copies of the amendments to those required to receive notice in subpart 6; and~~

~~(3) the board has either agreed that the amendments are minor or failed to act within 60 days of receipt of the amendments.~~

~~C.~~ After the effective date of the plan, a local government unit shall make replacement, exemption, no-loss, and other determinations consistent with the plan.

~~D.~~ For the purposes of this subpart, minor amendments include clarifications, updates to wetland or replacement site inventories, and other changes that do not substantially alter the standards of the approved plan and ordinance, as determined by the board. Amendments required to bring the plan into conformance with revisions to this chapter may also be considered minor.

- *Item B clarifies the length of time covered by the plan and allows a two year extension of that period, both of which are consistent with 103B.311 Subd. 4.*
- *Items C and D provide a process for amending the plan and a streamlined process for minor amendments. The minor amendment approval process is consistent with 8410.0140 except for the 60-day window which is consistent with WCA statutes.*
- *The previous item C is relocated to the Implementation subpart and edited there.*

~~Subp. 5. [Repealed, 27 SR 135]~~

~~Subp. 6. [Repealed, 27 SR 135]~~

~~Subp. 7. Local program capacity requirements.~~ Any local government unit opting to pursue incorporating this chapter into local ordinance must provide documentation to the board demonstrating local capacity to implement the program consistent with requirements prescribed in part 8420.0200, subpart 2, item A.

The above subpart is proposed to be relocated to subpart 1.

Subp. ~~810~~. **Reporting and oversight.** ~~An annual activity report must be provided to the board which documents compliance with plan standards as required in subpart 2. The annual report shall include such items as the number and type of permits and exemptions issued, including documentation of the area of wetlands impacted and replaced, complaints received, plan and ordinance violations including number of cease and desist orders, projects constructed, variances granted, and local appeal proceedings. In addition to and as part of the reporting requirements of Part XXXX, local government units with an approved and adopted comprehensive wetland management plan must annually provide information to the board regarding activities that vary from this chapter, this section notwithstanding, and documenting compliance with the minimum plan standards required in subpart XXX of this section. Failure to provide this information on an annual basis may subject the local government unit to penalties under 8420.XXXX. Penalty for Local Government Unit Failure to Apply Law.~~

The original language above is proposed for deletion as reporting is already required elsewhere in the rule. The added language is intended to specify what additional information is required for local governments with CWPMPs.

HIGH PRIORITY REGIONS AND AREAS

8420.0350 XXXX HIGH PRIORITY REGIONS AND AREAS.

Subpart 1. **High priority regions.** Parts of the state that are high priority regions for preservation, enhancement, restoration, and establishment of wetlands include all major watersheds with a majority of their land area contained within counties that have lost 50 percent or more of their presettlement wetland base, which are those listed in part ~~8420.0540, subpart 5, item B~~ 8420.XXXX. In all other counties of the state, high priority regions are high priority areas approved as such by the board according to subpart 2.

Subp. 2. **High priority areas.**

A. **Planning context.** Water management plans prepared by water management organizations in the metropolitan area under Minnesota Statutes, section 103B.231, by counties outside the metropolitan area under Minnesota Statutes, section 103B.311, and by watershed districts outside the metropolitan area under Minnesota Statutes, sections 103D.401 and 103D.405, ~~must~~ may identify those areas that qualify as high priority areas for wetland preservation, enhancement, restoration, and establishment. ~~These priority areas shall be included in the next scheduled water management plan update.—In order to designate a high priority area, the preservation, enhancement, restoration, and establishment of wetlands must have or achieve high public value based on the functions of wetlands. To identify high priority areas, the local government unit shall consider at a minimum those items listed in part 8420.0103 XXXX and the goals of the water management plan.~~

“Must” was changed to “may” in the above paragraph because it is not a statutory requirement, it is currently not being followed consistently in practice, and if the intent is for it to be a requirement, the proper place is in the statutes or rules that correspond directly to those plans. Defining high priority areas as defined here is only a requirement if the local government wishes to accept applications for wetland preservation area designation. However, there was some disagreement among BWSR staff rule team members. Some believed it should be mandatory for all plans. It is open for discussion.

B. **Priority watersheds.** High priority areas should be delineated designated by minor or major sub-watershed. ~~Plans should give s~~Strong consideration should be given to identifying as high priority areas minor watersheds having less than 50 percent of their original wetland acreages and where restoration of previously impacted or degraded wetlands will contribute towards achieving watershed-based goals. Consideration should also be given to watersheds that contain high valued wetlands that are at risk of

degradation or loss and whose protection is integral to maintaining the ecology and condition of the watershed. Identification of high priority watersheds should be consistent with 8420.XXXX subpart 5.

~~and intact wetlands, diminished wetlands, and the areas once occupied by wetlands that have been diminished or eliminated and could feasibly be restored taking into account the present hydrology and use of the area. Plans should give strong consideration to identifying as high priority areas all type 1 or 2 wetlands, and other wetlands at risk of being lost by permanent conversion to other uses. When individual wetlands are identified as high priority for preservation and restoration, the high priority area shall include the wetland and an adjacent buffer strip not less than 16.5 feet wide around the perimeter of the wetland and may include up to four acres of upland for each wetland acre.~~

C. **Priority wetlands.** Water management plans may identify individual wetlands, or criteria to establish individual wetlands, as high priority areas. Individual wetlands identified as high priority areas should be of high local value, at risk of degradation or loss, and consistent with any existing wetland classification criteria established under 8420.XXXX subpart 5B. Plans may also identify individual sites as high priority areas for wetland restoration and establishment. High priority restoration sites should be identified according to the criteria in 8420.XXX subpart 5C.

The first sentence in Item B was relocated here from the existing Item C below. Major watershed was changed to sub-watershed to provide for a better analysis and more focus on the areas that will provide the most benefit. Much of the language in item B was re-written to provide more clarity and specificity, and to provide more consistency with a broad ecosystem and watershed approach to wetland protection.

The requirement to include a buffer strip is proposed to be removed as the identification of high priority areas would typically not be to the level of precision necessary to delineate a buffer strip around it. The buffer strip requirement becomes relevant upon application for a Wetland Preservation Area, and it is included in that part of the rule.

Item C was added to differentiate between instances where an entire watershed is designated, vs. individual wetland areas.

Both items B and C include ties to the planning portion of the CWPMP section.

D. **Wetland Preservation Area Criteria.** Water management plans that identify high priority areas and intend to accept applications for wetland preservation areas under 8420.XXXX should include criteria for eligibility and prioritization of applications.

~~C. In all counties, plans may identify additional high priority areas where preservation, enhancement, restoration, and establishment of wetlands would have high public value by providing benefits for water quality, flood water retention, public recreation, commercial use, and other public uses. High priority areas should be delineated by minor or major watershed. For the purposes of this part, "watershed" means major or minor watershed or subwatershed. To identify high priority areas, the local government unit shall consider at a minimum those items listed in part 8420.0103.~~

DE. **Board review and approval.** The board ~~shall~~ will review the inclusion of high priority areas in plans as part of the standard process for plan review ~~established in statute~~. High priority areas approved by the board that are not in a high priority region listed in subpart 1 become high priority regions with board approval.

WETLAND PRESERVATION AREAS

8420.0400 ~~XXXX~~ WETLAND PRESERVATION AREAS.

Subpart 1. **Purpose and eligibility.** The purpose of this part is to provide local governments with a tool to promote the preservation of high valued wetlands and the restoration and enhancement of wetland areas that will contribute towards meeting watershed-based goals identified in a local water management plan. Wetlands located in ~~areas that are both high priority regions and~~ high priority areas as identified in part 8420.0350~~XXXX~~ and a local water plan are eligible for enrollment as wetland preservation areas. A wetland so enrolled is exempt from property tax. Sites identified as high priority areas for wetland restoration and establishment are only eligible for wetland preservation area designation after restoration of the wetland. Wetland areas receiving replacement credit are not eligible for designation as a wetland preservation area.

The last sentence of subpart 1 was added to prevent replacement wetlands from being enrolled and becoming tax exempt, as that is not the intent of the program.

Subp. 2. **Landowner application for wetland preservation area.** A landowner may apply to the county or watershed district, if the county or watershed district chooses to accept wetland preservation areas, for designation of a wetland as a wetland preservation area on forms provided by the board. The applicant must include a buffer strip of upland 16.5 feet wide that meets the minimum width requirements of 8420.XXXX subpart X around the perimeter of the wetland. The applicant may include up to four acres of upland for each acre of wetland. The application must be accompanied by a restrictive covenant on a form provided by the board. The covenant will contain the same limitations on use that are provided in Minnesota Statutes, section 103F.515, subdivision 4, including a covenant that the enrolled upland area will be vegetated by the landowner to permanent vegetation other than noxious weeds. The covenant must be signed, acknowledged, and ready for recording.

Subp. 3. **County or watershed district review of application.** Upon receipt of a complete application, the county or watershed district shall send a copy of the application to the county assessor, the board, and the soil and water conservation district where the land is located. The soil and water conservation district shall prepare an advisory statement of existing and potential preservation problems or conflicts and send the statement to the owner of record and to the county or watershed district. The county or watershed district may accept the application if the wetland is in a high priority region and high priority area, if it includes the minimum required buffer width 16.5-foot strip, and is accompanied by the proper covenant. The county or watershed district may limit or reject additional upland proposed to be included according to criteria identified in the approved plan and standards the county may establishes. The county or watershed district may reject the application if the application does not qualify, or require send it back for modification and resubmittal if that is appropriate. If the application qualifies, the county or watershed district may approve it and mark the date of approval on the application. The county or watershed district shall notify the landowner of the acceptance or denial of the application within 60 days from the date of the application. Within five working days of approval of the application, the county or watershed district shall forward it to the county recorder for recording of the restrictive covenant or memorialization of the application on the certificate of title. The county or watershed district shall also send a copy of the approved application to the county assessor for entry in the assessor's records as a wetland preservation area. The county or watershed district shall also send copies of the approved application to the soil and water conservation district, the local government unit, and the board.

Subp. 4. **Applicable statutes.** In addition to this chapter, wetland preservation areas are subject to Minnesota Statutes, sections 103F.612 to 103F.616, and the property tax provisions of Minnesota Statutes, section 272.02, subdivision 11.

Subp. 5. **Commencement of wetland preservation area.** The wetland is a wetland preservation area commencing 30 days from the date the county notifies the landowner of acceptance of the application under subpart 3.

Subp. 6. **Fee.** The county or watershed district may require an application fee to defray administrative costs of the program.

Subp. 7. **Maps.** ~~The eCounty~~ ies having approved wetland preservation areas within their legal boundaries shall maintain ~~wetland preservation area~~ maps illustrating land covenanted as wetland preservation areas.

Subp. 8. **Reimbursement of unpaid taxes.** A county or watershed district with an approved wetland preservation area will be reimbursed for lost tax revenue according to Minnesota Statutes, section 275.295.

Additional language in Subpart 3 is added for consistency with statute. Subpart 8 is proposed to be added to improve clarity and inform local governments of the fact that they can be reimbursed for tax revenue lost to wetland preservation area designation.